

**Submission on Private Members Bill to Regulate
Private Political Party Funding**
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Introduction

Private funding of political parties is an issue that has starkly come into focus over the last few months and there have been calls from both the public and from senior members of the ruling party for legislation to be formulated that can provide much needed regulations. As our democracy matures, it is incumbent on all of us as political parties to assess where our current democratic framework is falling short of the constitutional vision, whether that is in terms of electoral reform or in this instance the vexing issue of private funding of political parties. It is my considered belief that the absolute lack of regulations governing the private funding of political parties is a major gap in our democratic framework and it is one that now needs to be urgently rectified. All mature democracies around the world have instituted some form of regulation governing the private funding of political parties, with greater or less success it must be stated, and South Africa urgently needs to embark on a similar initiative.

I would therefore firstly like to thank the committee for giving me the opportunity to present on my legislative proposal which I believe is essential in promoting both good governance and in strengthening democracy in South Africa. This legislative proposal is the culmination of a campaign that has spanned over five years and has been fought not only by the Independent Democrats and myself but also by a number of public interest organisations that firmly believe that this legislation is sorely needed. In order to give substance to my legislative proposal I believe that it is firstly necessary to give a brief summation of the historical context of this campaign.

High Court Case brought by Idasa in 2004

Based on their belief in the public's Right to Know, IDASA on behalf of a number of civil society organizations brought a high court case against the four largest political parties represented in the National Assembly in 2004 asking that they disclose all of their private donors.

IDASA Position Paper – Regulation of Private Funding to Political Parties

In support of their high court challenge, IDASA brought out a position paper on the issue outlining a number of important arguments that are worth repeating in this submission:

“While the private financing of political life is desirable and necessary it also presents a problem if left unregulated. Secret donations from private sources, such as wealthy individuals or large corporations, can exert undue influence on the political system, secretly drowning out the interests of the poor and less powerful.

Private donations exert influence over politics in a number of ways and can have a corrupting effect on government. Private donations to parties in return for an unauthorized favour or the promise of a favour if elected to office or accepting contributions from disreputable sources are two such examples.

Corruption can also have a distorting effect on the functioning of government and may skew socio-economic development and increase inequality and poverty. Progressive parties in government have been distracted from the wider socio-economic agenda by donations from big business.

Trust in democracy can also be undermined. When public policy decisions are made, or are perceived to be made, on the basis of political contributions, not only will policy be suspect, but government will not be seen as accountable to the people, and the principles of participation and legitimacy will be undermined.

In a country such as South Africa, with profound socio-economic disparities and demographic differences, money in politics has the very real prospect of compromising the priorities of the public agenda and eroding democratic gains. “

Outcome of the Court Case

Although the judge in the case did not ultimately rule in their favour he did make the following important statement in his judgment:

“[this decision] does not mean that political parties should not, as a matter of principle, be compelled to disclose details of private donations made to their coffers... [Idasa] have nevertheless made out a compelling case – with reference both to principle and comparative law – that private donations to political parties ought to be regulated by way of specific legislation in the interest of greater openness and transparency”.

Noting in conclusion that Idasa had “raised matters of great public interest and concern”, it is clear that the Court relied substantially on the assertions made by the political parties, and the ANC in particular, that a legislative process is the best way to design the regulation of private donations.

Ruling Party’s Commitment to Legislation

In its Heads of Argument, the ANC stated that “the question of regulation and control of private donor funding of political parties should be addressed and implemented through a legislative process which will embody national policy

perspectives and the balancing of the rights and interests of all persons, including the electorate, political parties and their donors”.

The ruling party further gave the commitment that it would be bringing to Parliament such legislation in the near future. Unfortunately since that judgment five years ago such legislation has not been brought to Parliament.

It is my absolute conviction that this legislation is now desperately needed so as to promote the principles of good governance and strengthen our multiparty democracy. It is a sad fact that almost all of the biggest scandals that have occurred in our democracy since 1994 have in some way been due to the lack of party funding regulation. These have ranged from the Arms Deal, Oilgate, Roodefontein Golf Estate, the Harksen debacle and the Brett Kebble intrigues to name just a few.

What should also be evidenced in the above examples is that almost all political parties have been compromised by the lack of such regulations and it is in the interest of all political parties as well as the public at large that such legislation is now enacted.

Form of such Legislation

Unfortunately when this issue has been discussed it has often been reduced to the simple point of disclosure of party donors. I believe that this is too simplistic for an issue that is extremely complex. There are a number of unintended consequences that one has to avoid in drafting such legislation which therefore requires a great deal of thought and debate around a number of other issues. I have merely listed four issues that I think should form part of such overarching legislation.

- 1) Disclosure above a Certain Amount – This legislation should not force every donor to reveal their political affiliation, particularly if the individual is wanting to make a small private donation to the party of their choice. A threshold should therefore be set such as all donations above R20 000 or R50 000 should be disclosed to the public.
- 2) Ban on Foreign Donations – In a cursory study of other democracies I have found this to be a common thread. Most democracies including the UK, US and Ghana ban donations from foreigners including governments, corporations and individuals. This is something we should certainly consider.
- 3) Restrictions on Election Expenditure – This is in fact one of the best ways in which to level the electoral playing field and ensure that a party's message is more important than its money in an election. A number of countries have in fact enacted such restrictions and this is something that the proposed legislation should consider.
- 4) Ban on political parties doing business with the State – This is a very important issue if one wants to avoid massive conflicts of interest

where a ruling party in the country or in a province is able to financially benefit from a government contract. This practice should definitely not be permitted within the ambits of this legislation.

Conclusion

I hope I have made the case adequately for the dire need for this legislation. In fact almost all political parties represented in Parliament have at some stage or another publically expressed their support for such legislation. The ruling party has even passed a resolution at their Polokwane Conference on this very issue. This issue should no longer just be debated in the media or at conferences but should now rather be debated in Parliament and legislation must be drafted. I recognize the complexities of this issue and the fears that that some political parties have with regards to this proposed legislation. I believe, however, that these fears can be addressed and some of the anticipated loopholes closed if we are able to engage in a truly multiparty process that displays the political will to finally regulate this form of political activity. Our country needs it, our democracy requires it and the public at large is demanding it! Let us show political leadership and finally get it done.